

Material transmitted

HHS Personnel Instruction 792-2, Employee Assistance Program
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Exhibit 792-2-A, Consent for Release of Confidential Information
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Exhibit 792-2-B, Consent for Obtaining Confidential Information
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Exhibit 792-2-C, Confidentiality Procedures for Client Records
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Exhibit 792-2-D, Secondary Disclosure Prohibition (page D-1)
Exhibit 792-2-E, Model Job Rehabilitation Contract (page E-1)

Material superseded

HHS Personnel Instruction 792-2 (pages 1-10:82.16)
Exhibit 792-2-A (pages A-1-A-6)
Exhibit 792-2-B (pages B-1-B-3)
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Background

A significant proportion of the national workforce is experiencing personal problems which are serious enough to adversely affect job performance. This results in billions of dollars of lost productivity each year and has major adverse effects on the welfare of all Americans. In 1979, the Secretary announced the creation of a department-wide counseling program for employees whose alcohol, drug and emotional problems affect their ability to perform effectively at the job. The program would not only service HHS employees but be the model program for the entire Federal Government. HHS has maintained its commitment to this program, recognizing the enormous costs, both financial (almost \$200 million per year in HHS alone) and human, of alcohol, drug, and emotional problems.

In 1982, the Assistant Secretary for Personnel Administration (ASPER) issued policy guidelines and procedures for the new Employee Counseling Services Program. Since then, the program has grown to include more types of assistance and services. It has also been affected by several executive and legislative actions, particularly the signing of Executive Order 12564 (and its implementing legislation, P.L. 100-71), which established the goal of a drug free federal workplace. This Instruction is revised to reflect these changes. Consistent with its broader

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(Background continued)

mandate and services offered, the name of the program is changed to the Employee Assistance Program.

This issuance is effective immediately. However, changes in conditions of employment for bargaining unit employees must be implemented consistent with labor relations responsibilities in 5 U.S.C. Chapter 71 and provisions of negotiated agreements.

Filing instructions

Remove superseded material and replace it with new material. Change Table of Contents (Instruction 002-1) for the Personnel Manual to reflect changes. Post receipt of this transmittal to the HHS Check List of Transmittals and file this transmittal in sequential order after the check list.

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Assistant Secretary for
Personnel Administration

Subject: EMPLOYEE ASSISTANCE PROGRAM

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792-2-00 PURPOSE AND AUTHORITY

A. Purpose

This Instruction outlines the provisions of the Department's Employee Assistance Program (EAP), developed to address deficient employee work performance, conduct, attendance, reliability, or safety resulting from personal problems. When these problems are effectively dealt with and treated, affected employees are expected to become healthier, better adjusted individuals, who are likely to perform more productively in their jobs.

B. Authority

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616, Section 201a) and the Drug Abuse Treatment Act of 1972 (P.L. 92-255, Section 413a) authorized Federal agencies to provide appropriate alcohol and drug services for civilian employees. P.L. 79-658 also authorized heads of Departments to establish

Responsible office: Employee Assistance Program, Personnel Policy Group
Office of Human Resources, Assistant Secretary for
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health service programs to promote and maintain the physical and mental fitness of employees.

In 1986, the Omnibus Drug Enforcement, Education, and Control Act (P.L. 99-570) was enacted. That law reiterated Congressional concern about the prevention of illegal drug use and the referral to treatment of Federal employees who use drugs. Also in 1986, Executive Order 12564 established further requirements for agencies and employees in order to obtain a drug free federal workplace. P.L. 100-71 (1987) was enacted to establish requirements for implementation of the Executive Order. The EAP was given a major role in each of these.

792-2-10 REFERENCES

- A. 5 U.S.C. 552a (law-Privacy Act of 1974 insures confidentiality of Federal records)
- B. 5 U.S.C. 7301 (law-established requirements for Federal agency drug free workplace plans)
- C. 5 U.S.C. 7361-7362 (law-development by OPM of programs for Federal employee drug abuse, and alcoholism/alcohol abuse, respectively)
- D. 5 U.S.C. 7901 (law-authorizes health programs for Federal employees)
- E. 5 U.S.C. 7904 (law-mandates agency EAPs for employee alcohol and drug abuse)
- F. 29 U.S.C. 791 (law-Rehabilitation Act of 1973 requires that agencies make reasonable accommodation for employees with known handicaps)
- G. Executive Order 12564 (mandated drug free Federal workplace)
- H. 5 CFR Parts 293 and 297 (regulation-implements Privacy Act)
- I. 5 CFR Part 339 (regulation-medical qualifications determinations)
- J. 5 CFR Part 792 (regulation-Federal employee health and counseling programs)

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- K. 42 CFR Part 2 (regulation-confidentiality of alcohol and drug abuse patient records)
- L. 45 CFR Part 5b (regulation-implements Privacy Act in HHS)
- M. Federal Personnel Manual Chapter 792 (Federal employee health and counseling programs)
- N. Federal Personnel Manual Supplement 792-2 (alcohol and drug abuse programs)
- O. Federal Personnel Manual Chapter 339 (medical qualifications determinations)
- P. Federal Personnel Manual Supplement 830-1 (disability retirement)
- Q. HHS Personnel Instruction 297-1 (protection of privacy in personnel records systems)
- R. HHS Personnel Instruction 430-4 (performance management)
- S. HHS Personnel Instruction 430-2 (performance management for PMRS)
- T. HHS Plan for a Drug Free Workplace

792-2-20 DEFINITIONS

- A. Alcohol abuse or alcoholism--treatable conditions in which employees' work performance or conduct may be impaired as a direct result of the use of alcohol. These are handicapping conditions under Section 501 of the Rehabilitation Act of 1973, as determined by the Attorney General of the United States (43 op. Atty. Gen. no. 12).
- B. Drug abuse or drug addiction--treatable conditions in which employees' work performance or conduct may be impaired as a direct result of the use of legal or illegal drugs. These are handicapping conditions under Section 501 of the Rehabilitation Act of 1973, as determined by the Attorney General of the United States (43 op. Atty. Gen. no. 12).
- C. Emotional/behavioral problems--personal problems which may impair job performance or conduct. Such problems include depression, anxiety, stress, psychiatric illnesses, and those stemming from the alcohol or drug abuse or emotional

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problems of another person. These problems can also stem from working conditions or the nature of the job itself.

- D. Community resources--agencies and individual practitioners that provide treatment and rehabilitation for EAP clients referred there. These include, but are not limited to: hospitals and other inpatient facilities, clinics and other outpatient facilities, family counseling services, financial counseling services and self-help groups.
- E. Consortium--arrangement among a number of different Federal agencies to collectively establish an EAP that will service the employees of each member agency.
- F. EAP counseling--professional services provided by the EAP that are brief in nature and include the case management aspects of assessment, information, referral to community resources, short term counseling, and follow-up to evaluate progress after intervention.
- G. Self referrals--employees who suspect they may have alcohol, drug or any emotional problems, who choose to use the EAP on their own initiative on a confidential basis.
- H. Supervisory referrals--employees with deficient job performance or conduct problems who are referred to the EAP by their supervisors.
- I. Supervisory consultation--discussions between a supervisor and an EAP staff member to discuss a potential supervisory referral, to assist a supervisor in dealing and communicating with a potential referral or current EAP client, or to follow up on a referred employee's progress during and after treatment.
- J. Medical review officer--individual responsible for receiving and interpreting laboratory results generated as a result of the HHS Drug Free Workplace Program, who is a licensed physician with substance abuse knowledge and who will notify the EAP of any positive drug test results.
- K. Job rehabilitation contract--an agreement regarding the treatment and administrative steps to be taken by the EAP, employee and supervisor to resolve employee problems and return the employee to full performance. These are required when the employee has been referred to the EAP as the result of a positive drug test result.

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- L. Drug program coordinators--persons responsible for the coordination of the HHS Drug Free Workplace Plan. They work with the EAP to ensure that its responsibilities under the Plan are being fulfilled. There is one Departmental coordinator and at least one coordinator for each operating division.
- M. Qualified service organization--provides services to the EAP such as data processing, legal, child abuse prevention and other professional services. To be considered a qualified service organization, the organization must meet the requirements found in section 792-2-50A.4b.

792-2-30 RESPONSIBILITIES

- A. Assistant Secretary for Personnel Administration (ASPER) is responsible for oversight and implementation of the Department's EAP, for the development of the program's policy and guidelines, and for the evaluation of the program.
- B. Director, Employee Assistance Program assists the ASPER in accomplishing the EAP objectives of program oversight and coordination, policy and guidelines development, program evaluation and providing reports to OPM.
- C. Heads of Operating Divisions are responsible for establishing and operating units of the HHS EAP to serve headquarters employees and for supporting program objectives nationwide.
- D. Regional Directors are responsible for establishing and operating units of the HHS EAP to serve all HHS employees whose duty stations are located within their regions (except for the Centers for Disease Control in Atlanta) and for supporting program objectives nationwide.
- E. Servicing Personnel Offices are responsible for the functional management of the EAP. This includes management of all tasks contained within this Instruction.
- F. Employee Assistance Program Administrators have responsibility for EAP operations within their assigned organizational or regional jurisdictions. They usually manage the EAP in one of three ways: 1) with an in-house staff of professional EAP counselors; 2) as part of an HHS or other agency sponsored consortium; or 3) by monitoring contractual EAP providers. The specific activities for which

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they are responsible are further outlined in this Instruction.

- G. Supervisors are important for the successful operation of the EAP. They are responsible for learning about EAP policy and procedures, for informing their employees about EAP, and for referring to the EAP employees whose deficient job performance or misconduct may indicate the presence of personal problems.
- H. Personnel Staff can do much to support the EAP. For example, they can recommend EAP referrals to supervisors seeking advice on problem employees, alert the EAP staff to organizational situations that may increase employee stress, include EAP information in new employee orientations, assist the EAP in arranging for EAP trainings and orientations, and recommend the EAP (when appropriate) to employees and supervisors when a claim for Worker's Compensation is made.
- I. Equal Employment Opportunity Staff can play very important roles in support of the EAP such as making the EAP aware of the unique stresses that minorities, women and handicapped persons experience in the workplace; and informing employees who complain of stress and personal problems about the EAP.
- J. Unions and their Officials can recommend the EAP to bargaining unit employees in need of such services. In addition, having credibility with bargaining unit members, they can endorse the EAP services generally as an adjunct to their services.
- K. Physical Security Personnel can recommend the EAP to employees who become disruptive and can assist the EAP if clients behave in a disruptive, violent or threatening manner while visiting the EAP.
- L. Health Unit Staff can recommend EAP referrals to employees whose complaints of physical ailments suggest alcohol, drug or emotional problems.

792-2-40 POLICY AND PROCEDURES

A. Policy

- 1. Scope. The EAP is available to all HHS employees, regardless of the nature of their personal problems. The EAP counselor may also see an employee's family member

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(either a relative of an employee or someone in a primary relationship with an employee) under the circumstances described below.

- a. The counselor may see the family member whether or not the employee is seen by the EAP when the family member has a problem that is connected with the employee's alcohol or drug abuse. In such circumstances, the family member may be the client of the program and receive all of its services.
- b. The EAP may see the family member in situations where the employee has a personal problem that may be helped by seeing the family member or when the personal problem of the family member is affecting the employee's ability to function on the job. In these situations, the program's client is the employee, not the family member, and the EAP's services are provided to the employee. In addition, the family member may be seen only if the employee him/herself is seen by the EAP, or if the intent of the EAP is to see the employee. In some such situations, the EAP may assess and refer for treatment the family or couple as a unit.

The EAP does not have authority to treat family members themselves in connection with any problem of the employee other than alcohol or drug abuse, nor does it have authority to treat family members in connection with family members' own problems.

2. EAP counseling services. The EAP provides professional counseling services that are brief in nature and must include:
 - a. Assessment--counseling sessions during which the nature and extent of the problem are determined; typically this activity takes 1-4 sessions but the best determinant of the number of sessions is always sound clinical judgment
 - b. Referral--action to refer an employee to one or more community resources to receive treatment, if necessary

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- c. Short-term problem solving--limited sessions with counselors to resolve problems that are not better resolved by a referral to a community resource; this activity is separate from the assessment process described above, although it is recognized the two activities may overlap; typically this activity takes no more than 4-6 sessions but the number of sessions must be based on sound clinical judgment
 - d. Follow up--monitoring by counselors of the employee's progress during and after treatment; the length and type of follow-up will be determined by the needs of the employees using the program
 - e. Supervisory consultations--sessions between the EAP and a supervisor to discuss a potential supervisory referral, to assist a supervisor in dealing and communicating with a potential referral or current EAP client, or to follow up on a referred employee's progress
 - f. Provision of information--responses to requests for informational materials and education on any issues related to personal problems
3. Other EAP activities. The EAP is also responsible for several administrative and outreach activities. At a minimum, these must include:
- a. Supervisory training--training programs provided to supervisors and managers at all levels so that they become aware of the EAP procedures and how to identify, deal with, confront and refer troubled employees
 - b. Informational programs--seminars, brown bag lunches, and other sessions periodically provided for all employees so that they become aware of the EAP services as well as the various personal problems that can affect job performance or conduct
 - c. Outreach--posters, fliers, bulletins and other techniques for reminding employees about the program's services; some form of outreach should be disseminated at least annually

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- d. Reporting and evaluation--routine reporting of quarterly data on program operations to the EAP Director in ASPER, data required for the annual OPM report, and special evaluations of program effectiveness
 - e. Quality assurance--procedures for assessing and assuring the quality and appropriateness of its services conducted by each EAP unit
 - f. Other--special services required by the HHS Drug Free Workplace Plan; see section 792-2-70 for more details
4. Leave usage. Employees are on official duty when they meet with the EAP, provided they obtain consent from their supervisors directly or do so indirectly by signing the EAP form consenting to the release of that information (see section 792-2-50). Employees who do not want their supervisors to know of their attendance must arrange appointments outside duty hours or on annual leave. Based on the availability of a counselor, sessions may be arranged during lunch periods, after work hours, or during periods of approved leave. Employees who are referred to community resources for treatment must request approved leave if these sessions occur during their scheduled work days.
5. Job security. Except for limitations for sensitive positions (as provided by Section 201 (c)(2) of P.L. 91-616 and Section 413 (c)(2) of P.L. 92-255) no employee's job security or promotion opportunities will be jeopardized solely for requesting counseling assistance from the EAP in connection with any personal problems. Except as described in section 792-2-70, participation in the EAP is voluntary. Individuals may be referred to the program by supervisors based on work performance or conduct deficiencies, but are not required to attend. Although refusing a referral to the EAP cannot itself be the reason for corrective action, if work performance or conduct does not improve, the fact that an employee refused the referral may be taken into account in any subsequent corrective actions. Continued performance or conduct problems will be treated in the same manner as any other unsatisfactory work performance or conduct, which may include corrective action or dismissal. The EAP is not intended to protect employees from corrective

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action when their work performance or conduct is not adequate or does not improve.

6. Confidentiality. EAP counseling records and information from employee visits will be kept in a confidential manner, in accordance with law and regulations. Section 792-2-50 describes in more detail the confidentiality procedures.
7. Methods for provision of EAP services. EAP Administrators in each regional and headquarters EAP unit have several options for the method of providing EAP services. All types of programs must, at a minimum, provide the services outlined in this Instruction. The types of programs include:
 - a. In-house programs, staffed by qualified Federal personnel
 - b. Participation in a consortium, a cooperative arrangement with a number of different Federal agencies to collectively provide services to employees of each member agency
 - c. Use of an outside contractor, to provide services for HHS employees, utilized for an entire consortium, or as part of a larger health services contract

B. Procedures

1. Self referrals. Employees who suspect they have a personal problem, whether or not it currently affects their work, are encouraged to use the EAP on their own initiative on a confidential basis. Self referred employees will receive the same EAP services as those referred through other sources. Those who choose to make use of the program on their own initiative should contact the EAP directly to make arrangements.
2. Supervisory referrals when there is not a performance or conduct problem. There may be occasions when it is appropriate for supervisors to informally refer employees to the EAP. Some of these situations are described below.
 - a. Employees may discuss personal problems with their supervisors or may show signs of being affected by a

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personal problem, even though work performance or conduct has not been impacted. In these situations, it is recommended that supervisors suggest the use of the EAP to their employees.

- b. Before an employee undergoes medical examination procedures under 5 CFR Part 339 the supervisor should consider referring the employee to the EAP. The EAP can often provide services that may negate the need for disability retirement or offer assistance to employees who do not qualify for such retirement. Use of the EAP shall not in itself affect eligibility for disability retirement, under CSRS or FERS, neither confirming such eligibility nor jeopardizing it.
 - c. If an employee has Acquired Immune Deficiency Syndrome (AIDS) or is affected by someone having AIDS the supervisor should refer the employee to the EAP for information, counseling, referral and other support for coping with this workplace issue. HHS Personnel Instruction 792-4 provides guidance on this topic. The same confidentiality standards found in this Instruction will apply to EAP clients with AIDS.
3. Supervisory referrals when performance or conduct has been affected. When ordinary supervisory methods do not bring about improvement in an employee's performance or conduct, it may indicate a personal problem exists. In this situation the supervisor should:
- a. Discuss the situation with the EAP to determine if it is an appropriate EAP case and to receive guidance in confronting and referring the employee. Early intervention is recommended.
 - b. Throughout this process, consult with the servicing personnel office to receive advice on taking any administrative or corrective actions.
 - c. Confront the employee and offer a referral to the EAP. The referral should be written as well as oral so that the supervisor has a record that an offer of counseling has been made. The EAP and, when appropriate, personnel specialists can assist with the preparation of this memorandum. The written referral should only:

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- (1) document the inadequate work performance or unsatisfactory conduct
- (2) specify that neither the documentation nor the referral to the EAP constitutes a disciplinary action
- (3) indicate that the supervisor has spoken to the EAP
- (4) offer EAP services to the employee
- (5) indicate that the EAP is confidential
- (6) indicate what is required to bring the deteriorated work performance or conduct to an acceptable level.

This memorandum must not be placed in the employee's Official Personnel Folder. The supervisor should not disclose this memorandum except as allowed in the privacy and confidentiality laws and regulations, without the employee's consent. If an adverse action is taken against an employee who received a written offer of EAP assistance and who subsequently denies having received it, the written referral may become part of the adverse action file as the supervisor's record of compliance.

- d. Allow a reasonable period, as determined jointly by the supervisor, employee relations specialist (when appropriate), and the EAP, for the employee's work performance or conduct to improve.
- e. Consult with the servicing personnel office in taking administrative or disciplinary actions if acceptable job performance or conduct does not come about after the decided upon period.
- f. Keep the EAP informed about any changes in the employee's work performance or conduct and any decisions to take corrective actions because of the possible impact these actions may have on the treatment the individual may be receiving.

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4. Cost. There is no cost to employees, eligible family members, and supervisors for the EAP services. If an employee accepts a referral to an outside community resource, the employee is responsible for the cost of that treatment. The EAP will work with the employee to try to keep the cost within the employee's financial means.
5. Use of Federal facilities. The laws establishing the EAP state that, where possible, Federal facilities such as the Department of Veterans Affairs and military hospitals, should be utilized for employee treatment, when the employee is eligible for and desires such treatment.

792-2-50 CONFIDENTIALITY AND RECORD KEEPING

A. General Procedures

1. Authority. The EAP provides for the confidentiality of all information in connection with an employee's use of the program in accordance with P.L. 98-24; 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records", revised June 9, 1987; the Privacy Act of 1974; and HHS Instruction 792-2. The highest professional standards will be adhered to by the EAP in keeping with the spirit and intention of these laws, regulations and policies.
2. Coverage. It is the responsibility of each EAP regional and headquarters unit to develop a system that will accommodate the requirements of this policy and its statutory and regulatory authority. These procedures also apply to contractors or consortia that are providing the EAP services.
3. Access. Access to the EAP client records is limited to those individuals listed below:
 - a. The EAP Administrators (those who work directly with clients) and their immediate EAP staffs (including staff counselors, staff secretaries, contract or consortia counselors and secretaries) are the only individuals having access to EAP records. They all shall be responsible for controlling access to and releases of information from any records in accordance with this Instruction.

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- b. 42 CFR Part 2 does allow for EAP staff to communicate among themselves about persons who use the program. This eliminates the need for staff to maintain separate records and for releases of information among EAP staff.
- c. The EAP Administrators, whether or not they directly provide services to clients, may have access to the EAP records for the purposes of:
 - (1) program oversight, evaluation, and quality assurance
 - (2) destroying EAP records at the end of their period of maintenance
 - (3) transferring them from one contractor to another
- 4. Exceptions to regulations. The rules and regulations found in 42 CFR Part 2, "Confidentiality of Alcohol and Drug Abuse Patient Records" do not apply in certain circumstances. There are several exceptions but the major ones of interest to the EAP are:
 - a. The regulations do not apply to the reporting under state law of incidents of suspected child abuse and neglect to the appropriate state and local authorities. However, other information on the employee maintained in the original EAP record is covered by these regulations. For example, if, following a report of suspected child abuse or neglect, the appropriate state authorities wish to obtain information or files from the EAP for civil or criminal proceedings, appropriate authorization would be required under the statutes and regulations.
 - b. Under certain circumstances, the regulations do not apply to communications between the EAP and a qualified service organization. This exception is limited to the exchange of information the qualified service organization needs to provide services to the EAP. To be considered a qualified service organization under these regulations, the organization must: 1) provide services to the EAP; 2) have a written agreement with the EAP; and 3) agree that it is fully bound by 42 CFR Part 2. This exception would predominantly apply to communications

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between an EAP unit and a qualified contractor of their EAP services rather than between EAP counselors and their referral resources.

- c. If the client commits or threatens to commit a crime that would physically harm someone or cause substantial property damage, disclosures may be made to appropriate persons, such as law enforcement authorities and those persons being threatened, but only if the disclosure does not identify the EAP client as an alcohol or drug abuser. The only exception is that if such a crime takes place at the EAP, the EAP can reveal only to law enforcement officers that a client is an alcohol or drug abuser, as long as the information disclosed under this exception is limited to the circumstances of the incident. Any other disclosure about the client may require a special court order.
 - d. The regulations do not apply to disclosing to a direct supervisor whether or not an employee attended the EAP on official duty status or on sick leave, if requested. No other information will be released without proper consent.
 - e. The regulations do not apply to the disclosure of a positive drug test result to the direct supervisor under the conditions of the Drug Free Workplace Program (see section 792-2-70).
5. Relationship to state laws. 42 CFR Part 2 should not be construed to authorize any violation of state law, in the event that a state law has greater restrictions than these regulations. Also, no state law may either authorize or compel any disclosures prohibited by these regulations.

B. Releases of Information

- 1. Disclosure with consent. Except where disclosure without consent is allowed (see paragraphs A.4 above and B.2 below), the employee's written consent must be obtained before any release of information can be made. This applies to all releases, including those to supervisors, treatment facilities, and family members, without regard to the type of problem the individual is experiencing. A consent form meeting the requirements of 42 CFR Part 2 is

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found in HHS Exhibit 792-2-A. A consent form for obtaining confidential information is found in HHS Exhibit 792-2-B.

2. Disclosure without consent. Disclosure without consent is only permissible in a few specific instances such as to medical personnel in a medical emergency, under certain court orders, and to comply with Executive Order 12564, "Drug Free Federal Workplace" (see section 792-2-70). See also A.4 (above) which discusses other instances where disclosures can be made because they are not covered by these regulations. Refer to 42 CFR Part 2 and the Privacy Act for other instances.
3. Informing employees. Employees who use the EAP must be told about these confidentiality provisions and furnished a written summary. A sample summary that meets the requirements of 42 CFR Part 2 and the Privacy Act is included as HHS Exhibit 792-2-C.
4. Secondary disclosure. Any information disclosed with the employee's consent must be accompanied by a statement which prohibits further disclosure unless the consent expressly permits further disclosures. A sample form for this purpose that meets the requirements of 42 CFR Part 2 is found in HHS Exhibit 792-2-D. This shall be attached to any written information release or sent separately if the information was released orally. A duplicate shall be maintained for the employee's EAP file.
5. Releases of information to and from supervisors. Except as discussed in A.4d, above, and in section 792-2-70, no information will be released to supervisors without the employee's written consent, regardless of the nature of the referral. The EAP will discuss the disclosure policies and forms with the employee, but the employee is not required to sign the forms.
 - a. If the employee chooses not to sign the form, the EAP may not disclose any information to the supervisor, except whether or not the employee made or kept appointments during duty hours.
 - b. When consent is given to disclose to a supervisor, the EAP will usually limit its discussion to: 1) attendance at the EAP; 2) cooperation with the program; 3) treatment plans that may interfere with

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the workplace; and 4) work performance or conduct issues.

- c. The information provided by the EAP should give the supervisor a general idea of the kind of progress an employee is making. The best indicator is always whether that person's job performance or conduct has improved.
- d. Although it is not required, it is a good practice for the supervisor to notify the EAP of any changes in work performance or conduct and any corrective actions taken because of the possible impact these decisions may have on the individual's treatment. Since this is not a release of information by the EAP but by the supervisor, a release of information form does not apply.

C. Record Keeping Procedures Related to Confidentiality

- 1. Case coding. In order to insure confidentiality, all files shall be maintained by a case numbering system, rather than by name.
 - a. Each employee using the EAP will be assigned a unique number.
 - b. All case file materials shall be placed in a folder labeled with this unique case number.
 - c. A list of code numbers that correspond to the employees' names will be maintained in a locked file separate from the case folders. It shall be locked when not in use and shall be maintained by the EAP Administrator, a senior counselor, or the EAP's records custodian.
 - d. In addition to active and re-activated records, the case coding and filing systems shall include records which have been closed (but not yet destroyed).
- 2. File contents. To the extent possible, all recordings entered into case files shall not contain identifying information. It is recognized that identifying information may need to be entered in the files at times (such as consents for release of confidential information) but shall be kept to a minimum. All

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contacts regarding employees shall be recorded in their files, with the most recent information filed on top. Each entry shall only contain information necessary for handling the case. The EAP file contents shall never be part of or stored with the employee's Official Personnel Folder or Employee Medical File.

3. Family member files. Information on family members of employees who use the EAP shall be maintained in the file of the employee. The only exception is when the family member is the client of the EAP as described in 792-2-40A.1a.
4. Location and security of files. All case files will be kept in a locked metal filing cabinet preferably equipped with a combination padlock and steel lock bar. The cabinet shall be locked when not in use. All persons having access to the files shall have previous training in the proper handling of records covered by 42 CFR Part 2. The file cabinet shall not contain the records of other HHS programs or departments. The locked file cabinet shall be secured by the last EAP staff member leaving the office each day.
5. Electronic record keeping. The same confidentiality safeguards shall be taken when records are stored electronically. EAP data systems shall be protected from entry by anyone outside the EAP by using discrete systems (personal computer used only by the EAP) or through password control.
6. Period of maintenance. Records are retained until three years after the employee has ceased contact with the EAP, whether or not the employee has terminated employment with HHS, longer if required by the state where the records are kept, or until any litigation involving the employee is resolved. When applicable, contract staff may retain records past this period, for as long as relevant statutes of limitation require.
7. File destruction. Files will be destroyed only by the EAP Administrator, with a witness present, and only after the required period of maintenance. The witness must be an HHS employee familiar with handling confidential records and, whenever possible, another EAP staff member. This includes electronic deletions. The written files will be destroyed by shredding or burning. Records

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located away from the EAP Administrator's site shall be transferred to the EAP Administrator in the confidential manner required by HHS and GSA policies. The name of the employees whose EAP records were destroyed shall be added to a record of former EAP participants. This list shall be kept with the case coding number record and the same confidentiality procedures apply. No other information about clients may be maintained once their files have been destroyed.

792-2-60 STAFF QUALIFICATIONS

This Instruction recognizes that the EAP is operated in various ways and, therefore, staff may be performing different functions. The following qualifications have been established accordingly.

- A. Employee Assistance Program Administrators have responsibility for EAP operations within their assigned organizational or regional jurisdictions. Administrators are HHS employees whose functions are based on the type of EAP provided. They must meet the qualifications outlined below.
 - 1. Directs EAP in-house and/or directs the EAP through a contractual arrangement.
 - a. The Administrator must have demonstrated ability in program management.
 - b. The Administrator must have knowledge of the various policies, regulations, Federal Personnel Manual (FPM) issuances, and laws governing the operation of EAPs in the Federal Government and in HHS.
 - c. The Administrator must agree to uphold professional standards of conduct including prohibition against referring clients to oneself in a private capacity. This also includes a prohibition against referring to persons/facilities with which the Administrator has any financial interests unless it can be demonstrated that there is some overriding clinical reason why it is necessary (such as its cost or quality being the best for the client or that there are no other treatment facilities available in the area).
 - d. If the Administrator is responsible for directing contractual EAP services, he or she must have successfully completed the HHS Project Officer's

(792-2-60A.1d continued)

training or complete it within six (6) months of assuming this role. This is required by the Department so that contract administrators are aware of the procurement regulations and how to oversee a contract.

2. Performs counseling functions as part of Administrator position.

If counseling/clinical functions are part of the Administrators' duties, they must also meet the qualifications described in section B.1 below.

B. EAP Counselors may be either HHS employees or contract staff. They provide direct counseling assistance and consultative activities.

1. Counselors who supervise other clinical staff and/or EAP Administrators providing counseling functions must meet the following qualifications.

- a. If a clinical social worker, the counselor must be trained at the master's level and possess a current State license or State certification. If these credentials are not available either through the State in which the individual is employed, domiciled or permanently resides, the individual must possess and maintain certification by a nationally recognized social work certifying organization (such as the Academy of Certified Social Workers or the Federation of Clinical Social Workers). This national certification process must require a master's degree in social work and at least two years of post-degree practice supervised by a social worker who is licensed or certified at this same level.
- b. If a clinical psychologist, the counselor must possess and maintain a valid, current, unrestricted State license or State certification.
- c. If a psychiatrist, the counselor must possess and maintain a current and unrestricted State license.
- d. If a psychiatric nurse, the staff person must possess and maintain a current, valid State license/registration as a professional nurse.

(792-2-60B.1 continued)

- e. If the counselor holds a graduate degree in another mental health field (typically these include master of counseling, master of counseling psychology, master of marriage and family counseling), it must be demonstrated that the academic training included a supervised clinical experience. This individual must possess and maintain a current State license or State certification (appropriate to the degree) from the State in which he or she is employed, domiciled or permanently residing. If such credentials are not available, the individual must possess and maintain certification by a nationally recognized certifying board such as the National Board of Certified Counselors (NBCC). The certification must require a supervised clinical experience of at least two years.
 - f. The counselor must have demonstrated proficiency in the area of assessing and counseling alcohol and drug abusers or be certified in this area by State or local governments or by another authorized certification board.
 - g. The counselor must have demonstrated proficiency in the provision of human services in the workplace or be certified in this area by an academic institute or a nationally recognized association such as the Certified Employee Assistance Professional (CEAP).
 - h. The counselor should maintain active membership in the professional association appropriate to his or her degree.
2. Staff counselors are those in non-supervisory clinical positions. Except for psychiatrists, recently graduated masters degree holders who do not meet supervised practice requirements for licensure or certification may be employed as staff counselors but must work under the direct supervision of a practitioner who meets the qualifications listed in section B.1 above. Appropriate licenses/certifications must be obtained within two (2) years of appointment or employment date.
3. Clinical interns must be training at the graduate level in a mental health profession. They must be closely supervised by an EAP staff member meeting the qualifications in section B.1 above.

(792-2-60 continued)

- C. Project Director is the contract staff member responsible for the overall management of the contract and for reporting to the EAP Administrator. This person may or may not perform counseling duties as part of this role.
1. If no counseling duties are performed for HHS, the Project Director must, at a minimum, meet all the requirements stated in A.1a-c above.
 2. If counseling duties are performed for HHS, the Project Director must, at a minimum, also meet the requirements stated in B.1 above.
- D. Other Staffing Requirements
1. Staffing ratio. Regardless of program type, the required staffing pattern is one full time counselor per 3,500 employees in the target population. Exceptions to this requirement may be granted by the EAP Director, when there is sound justification.
 2. Professional development. In addition to the requirements outlined above, it is expected that all EAP staff will continue their professional development, appropriate to their staff position and any licensing or certification requirements.
 3. Liability insurance. It is required that all contract staff, regardless of position, have liability insurance coverage.
 4. Qualifications for current staff. Any HHS employees providing EAP services on the date of this issuance are considered in compliance with the staff qualifications outlined above, but only for the position they currently occupy. Any new HHS or contract staff hired after the date of this issuance must meet the staff qualifications outlined above. Any current HHS or contract EAP staff who move to other EAP positions after the date of this issuance, must meet the staff requirements above for the position to which they are moving. In addition, staff hired under any new contract signed after the date of this issuance must meet the staff qualifications outlined above.

(792-2-60D continued)

5. Clinical evaluations. Any staff performing quality assurance and evaluation EAP tasks that are strictly clinical in nature (such as assessment, treatment planning and referral) must meet all the requirements in B.1 above or obtain outside clinical expertise.

792-2-70 INTEGRATION OF EAP WITH HHS DRUG FREE WORKPLACE PLAN

In response to Executive Order 12564 and its implementing legislation (Public Law 100-71), HHS developed the Drug Free Workplace Plan to set forth the objectives, policies, procedures and implementation guidelines necessary to achieve a workplace free of illegal drugs. This plan covers four areas: 1)employee assistance; 2)employee education; 3)supervisory training; and 4)identification of illegal drug use through drug testing on a carefully controlled and monitored basis. The EAP's responsibilities in each of these areas are summarized below. (Refer to the Department's Drug Free Workplace Plan for more details.)

- A. Employee Assistance. The overall objective of the EAP in relation to the Drug Free Workplace Plan is to assist supervisors and managers in dealing with the consequences of their employees' illegal drug use and to assist employees in their efforts to overcome current drug use and refrain from future use.
 1. The EAP shall provide counseling and assistance (as described in section 792-2-40 above) to employees with illegal drug problems who are referred for treatment through the means described above or whose drug tests have been verified positive.
 2. The EAP shall provide guidance and assistance to supervisors and managers regarding drug related problems, in addition to the assistance outlined in section 792-2-40 above.
 3. The EAP shall develop a Job Rehabilitation Contract for each employee referred to the EAP as a result of a verified positive drug test or each employee under the provisions of Safe Harbor. The purpose of this contract is to insure that the supervisor, the EAP, the employee and the union representative (if requested by a bargaining unit employee) are in agreement regarding the steps to be taken as part of the EAP/rehabilitation process and after counseling or treatment has been

(792-2-70A.3 continued)

completed. It must be developed in accordance with the requirements of Section III.F. of the HHS Drug Free Workplace Plan. A model contract is found in HHS Exhibit 792-2-E.

4. The EAP shall monitor the employee's progress through treatment and rehabilitation. This may include providing the employee's supervisor with regular progress reports.
5. The EAP shall insure that the highest possible confidentiality standards are maintained. The same EAP confidentiality guidelines outlined in section 792-2-50 will apply to employees referred to the program under the Drug Free Workplace Plan with one exception. This exception is that once the medical review officer (MRO) notifies the EAP of a verified positive test result, the employee's immediate supervisor shall be contacted by the EAP to discuss the result in order to make further intervention plans. This may be done without the employee's written consent, except when the employee is already seeking assistance for a substance abuse problem through the EAP. In this event, the EAP shall attempt to obtain the employee's consent to discuss that fact before contacting the supervisor. If the employee's consent cannot be readily obtained, the EAP should contact either the EAP Director or the Department's Drug Program Coordinator for guidance before informing the supervisor.
6. The EAP shall maintain a list of rehabilitation or treatment organizations which provide services for persons with drug problems. This list must include certain information on each service as outlined in Section VI of the Drug Free Workplace Plan. The EAP shall also periodically visit treatment organizations to determine their quality of care.
7. In addition to the referral methods discussed above, employees may also self-refer to the EAP under the Safe Harbor provision in the HHS Drug Free Workplace Plan. This provision protects an employee from disciplinary actions that may be taken against an employee found to be using drugs illegally. These employees must voluntarily admit the drug use before being identified through other means, must complete counseling/rehabilitation as determined and monitored by the EAP, and must not use drugs again. A Job Rehabilitation Contract must be completed as noted under A.3 above. The Safe Harbor

(792-2-70A.7 continued)

provision cannot protect employees from disciplinary actions or random testing if they refuse to notify their supervisors that they are seeking help for their drug problems. It also cannot protect employees who have been found to use drugs illegally a second time.

- B. Employee Education. The Drug Free Workplace Plan requires that an orientation be provided to all HHS employees. The purposes are to acquaint them with the plan and its requirements. The plan also requires that each employee receive an education program on drugs and their use/abuse.
1. HHS' personnel training staffs shall develop the HHS Drug Free Workplace orientation. The EAP may be asked to assist with this effort.
 2. The EAP, in consultation with training staffs, shall develop the employee drug education program. The Drug Free Workplace Plan outlines the topics to be covered in Section V.
 3. Delivery of the orientation and education programs shall be coordinated by the appropriate Drug Program Coordinator in cooperation with the EAP.
 4. The EAP shall continue to offer employee drug education programs on an ongoing basis once the initial education effort is completed.
- C. Supervisory Training. The Drug Free Workplace Plan requires that all supervisors receive a training session devoted entirely to the requirements of the Plan. The purpose is to provide supervisors with an understanding of the plan and its policies, the EAP, and the integration of EAP services with the plan.
1. HHS personnel training staffs shall be responsible for developing and implementing initial supervisor training. The EAP may be asked to assist with this effort since one of the primary components of the training involves the EAP. The Drug Free Workplace Plan provides a course outline in Section IV.
 2. The EAP may also assist with or conduct follow-up and refresher training. These may be a part of other on-going supervisory training programs.

(792-2-70 continued)

- D. Drug Testing. The HHS Drug Free Workplace Plan includes provisions for the testing of employees for illegal drug use. The EAP shall not be responsible for the implementation or operation of the drug testing program, but will provide counseling and assistance described below.
1. The MRO shall notify the EAP of positive test results and will coordinate with the EAP to inform the employee's immediate supervisor of the result.
 2. The EAP shall then perform its normal functions of counseling and assisting employees and supervisors (described in this Instruction) in dealing with the drug problem.
 3. Those job applicants from outside of HHS who receive positive test results are entitled to and will be offered assistance from the EAP. This assistance will be limited to providing information on the availability of community treatment and rehabilitation services.

-SAMPLE-
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Employee Assistance Program

Consent for Release of Confidential Information

1. I _____ authorize:
2. the HHS Employee Assistance Program
3. to disclose: (kind and amount of information to be disclosed)

4. to: _____
(name or title of person/organization to which disclosure is made)
5. for: (purpose of disclosure) _____

6. Date consent signed: _____
7. _____
(signature of client)
8. _____
(signature of parent or guardian where required)
9. _____
(signature of person authorized to sign in lieu of client where required)
10. This consent is subject to revocation at any time except to the extent that the EAP has already taken action in reliance on it. If not previously revoked, this consent will terminate upon: _____
(specific date, event, or condition)

-SAMPLE-

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Employee Assistance Program

Consent for Obtaining Confidential Information

1. I _____ authorize:
2. _____
(name or title of person/organization from which information is requested)
3. to disclose to the HHS Employee Assistance Program
4. the following information: _____

5. for the purpose of: _____

6. Date consent signed: _____
7. _____
(signature of client)
8. _____
(signature of parent or guardian where required)
9. _____
(signature of person authorized to sign in lieu of client where required)
10. This consent is subject to revocation at any time except to the
extent that the EAP has already taken action in reliance on it. If not previously revoked, this consent will terminate upon:

(specific date, event, or condition)

-SAMPLE-
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Employee Assistance Program
Confidentiality Procedures for Client Records

The confidentiality of your EAP record is protected by Federal law and regulations. The highest professional standards will be adhered to by the EAP in maintaining this record.

GOVERNING LAWS AND REGULATIONS. The Privacy Act covers all records maintained by the EAP. The authority for maintenance of your record is 5 U.S.C. 7361, 7362, 7901, 7904, and 44 U.S.C. 3101. The principal purpose of maintaining information about you is to document your assessment, intervention and follow-up activities. The information provided by you is voluntary; however, if you do not provide the information, the EAP may not be able to serve you as completely. EAP records of clients with alcohol and drug abuse problems are subject to extra restrictions, described in the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations. Generally, the EAP may not say to a person outside the program that you attend the program, or disclose any information identifying you as an alcohol or drug abuser.

DISCLOSURES OF INFORMATION. Under the laws and regulations cited above, certain disclosures of information may be made:

1. when the client consents in writing.
2. when the disclosure is allowed by a court order.
3. when the disclosure is made to medical personnel in a medical emergency or when the disclosure is made in a non-identifiable form to qualified personnel for research, audit or program evaluation.
4. to a private firm, individual, or group providing EAP functions contractually. The contractor shall be required to maintain all confidentiality safeguards and surrender these records to the EAP Administrator at the time of contract termination.
5. to the Department of Justice for defending HHS and/or its employees in litigation. Records that do not involve alcohol or drug abuse may also be disclosed to a court or another party before the court for this purpose. This is further described in the current System of Records Notice. These disclosures must comply with all other aspects of these regulations and be approved by the Director of the EAP.

OTHER DISCLOSURES. There are two other instances when disclosures may be made without your consent, according to policies other than those listed above. They are:

1. when your direct supervisor needs to confirm that you have made or kept EAP appointments during regular duty hours or sick leave (no other information will be given without proper consent).
2. if you are tested and receive a verified positive drug test result (under the Drug Free Workplace Program), in which case your direct supervisor must be informed.

OTHER INFORMATION. Violation of the Federal laws and regulations by the EAP is a crime. Suspected violations may be reported to appropriate authorities in accordance with Federal regulations.

Federal laws and regulations do not protect any information about a crime committed by a client at the EAP or against any person who works for the EAP or about any threat to commit such a crime. Information on crimes that may harm other persons or cause substantial property damage is also not protected, as long as the EAP does not identify you as an alcohol or drug abuser.

Federal laws and regulations do not protect any information about suspected child abuse or neglect from being reported under State law to appropriate State or local _authorities.

(See 42 U.S.C. 290dd-3, 42 U.S.C. 290ee-3, and 5 U.S.C. 552a for Federal laws and 42 CFR Part 2 and 45 CFR Part 5b for Federal regulations.)

-SAMPLE-
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Employee Assistance Program

Secondary Disclosure Prohibition

1. Subject: Release of Confidential Information

2. From: HHS Employee Assistance Program

3. To: _____
(name/title of the person/organization to which
disclosure is made)

4. Date: _____

5. In accordance with Federal laws and regulations, we have released information to you on _____. We are required to inform you that this information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR Part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR Part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any client.

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

EMPLOYEE ASSISTANCE PROGRAM

MODEL JOB REHABILITATION CONTRACT

EAP Job Rehabilitation Contracts must be developed in accordance with the requirements listed in Section III.F. of the HHS Drug-Free Workplace Plan. They must also be developed consistent with the provisions of negotiated labor agreements.

I, in consideration for my participation in the Department's Employee Assistance Program, agree to the following provisions of this contract:

1. As a result of a verified positive drug test indicating illegal drug use, I accept referral to the HHS (Component's Name) Employee Assistance Program.
2. I agree to fully participate in an assessment conducted by the EAP, and I further agree to participate in short-term counseling with the EAP and/or accept a referral for treatment and rehabilitation, if recommended.
3. I agree to execute all necessary Release of Information forms, to allow only the EAP to obtain information on my progress while in treatment.
4. I agree to provide the EAP with the dates and times of my rehabilitation appointments and with explanations of any absences from these appointments.
5. I understand that two (2) unexcused absences will result in my having to make an appointment within three (3) working days with the EAP for re-evaluation, and in notification to my supervisor, and may result in disciplinary, administrative and/or adverse actions as a result of my failure to comply with this agreement.
6. I agree to the following treatment and rehabilitation plan (to be completed by the EAP, if applicable):

7. I understand that the treatment (if applicable) and rehabilitation outlined in this contract will cover a period not to exceed ____ (date) ____.

8. I understand that the following administrative and/or disciplinary actions will be initiated by my supervisor and/or higher-level supervisors as a result of my verified positive drug test result (delete if not applicable).

9. I further understand that implementation of these actions will be postponed or otherwise modified while I am undergoing treatment and rehabilitation as noted below.

(#8 and 9 to be completed by the EAP in consultation with the supervisor and employee relations specialist)

10. I understand that, notwithstanding the provisions of #9 above, I may be subject to other disciplinary or administrative actions for performance or conduct problems that occur during the period that I am under treatment and/or rehabilitation.

11. I understand that if I am in a sensitive position, I will be removed administratively from sensitive duties (unless the Secretary specifically restores them) at least until I successfully complete the treatment and rehabilitation outlined in #6 and 7 above. As an employee in a sensitive position, I also understand that if I am under the provisions of Safe Harbor all administrative actions will be cancelled if I successfully complete treatment and rehabilitation.

12. I understand that I will be exempt from the HHS random drug testing program during the period cited in #7 above while I am undergoing treatment and rehabilitation. I further understand that

at the end of this period I will be returned to the testing pool.
(delete if employee is not in random pool)

13. I understand that I am required to complete my treatment and rehabilitation program successfully. I understand that I will have done this if I do the following:

(to be completed by the EAP in conjunction with the treatment specialist)

14. I understand that non-compliance with this contract, including refusal to cooperate with the treatment and rehabilitation program, may result in disciplinary or administrative actions against me. Indications of non-compliance include, but are not limited to:

15. I understand that treatment and/or rehabilitation providers may require drug testing in order to monitor my progress, but that such tests are not part of the Department's drug testing program. A positive test result as part of the treatment/rehabilitation program can only subject me to disciplinary action if it is considered evidence of non-cooperation as noted in #13 above.

16. I understand that following the treatment and rehabilitation period cited in #6 and 7 above, I will be subject to a year of follow-up testing under the Department's Drug-Free Workplace program. A verified positive test result during this follow-up year or at any time thereafter will result in the initiation of action to remove me from Federal service.

17. I understand that the EAP is required to provide my supervisor with regular progress reports regarding my adherence to this contract, but that information regarding the nature of my treatment condition, my treatment, and any other related information will not be disclosed outside the EAP without my specific written permission. The reports to be provided will include the following information and be provided according to the following schedule.

(to be completed by the EAP)

18. I understand that as a result of my successful completion of this contract, the following administrative and/or disciplinary actions may be cancelled:

(to be completed by the EAP in conjunction with the supervisor and employee relations specialist)

The undersigned hereby agree to and adopt the provisions of this contract.

Employee

Immediate Supervisor

EAP Representative

Higher-Level Supervisor

Union Representative
(if requested by bargain-
ing unit employee)

Date